

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOHN POSPISIL & AIRENE POSPISIL

Plaintiffs,

vs.

**STATE AUTO PROPERTY &
CASUALTY INSURANCE COMPANY**

Defendant.

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Civil Action Number

Jury

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, State Auto Property and Casualty Insurance Company (“State Auto”), files this Notice of Removal pursuant to 28 U.S.C. §1446(a), and respectfully shows as follows:

**I.
INTRODUCTION**

1. Plaintiffs are John Pospisil and Airene Pospisil (hereinafter collectively referred to as “Plaintiffs”); Defendant is State Auto Property & Casualty Insurance Company (hereinafter “State Auto” or “Defendant”). There are no other parties. *See* Plaintiffs’ Original Petition, attached as Exhibit “A - 1”.

2. On December 6, 2016, Plaintiffs filed Cause No. 16-DCV-237557, *John Pospisil & Airene Pospisil vs. State Auto Property & Casualty Insurance Company* in the 400th Judicial District Court of Fort Bend County, Texas (“State Court Action”). *See* Exhibit “A - 1”. Plaintiffs’ suit alleges breach of contract, violations of the Texas Insurance Code and the Texas Deceptive Trade Practices Act, breach of good faith and fair dealing, and misrepresentation, relating to damage allegedly suffered at Plaintiffs’ home located at 8430 Orchard Mist Lane,

Richmond, Texas 77407. *See Exhibit "A - 1".* Plaintiffs demanded a trial by jury in their Original Petition. *See Exhibit "A - 1."*

3. A citation was issued and State Auto Property & Casualty Insurance Company was served on December 21, 2016. *See Exhibit "A - 4"* and Affidavit of Julie Corbett attached as Exhibit "B". State Auto files this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b). *Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007). State Auto files its Answer in this Court, contemporaneously with the filing of this Notice. State Auto demands a trial by jury in this Court.

4. Plaintiffs have not filed any amended pleadings and no additional parties have been joined. The State Court's Docket Sheet is attached as Exhibit "A - 6."

II.
REMOVAL BASED ON DIVERSITY JURISDICTION

5. Pursuant to 28 U.S.C. §1332(a), State Auto removes this case as it involves a controversy between parties of diverse citizenship and an amount in controversy that exceeds \$75,000.

6. Plaintiffs are citizens of Texas. *See Exhibit "A - 1".* State Auto Property & Casualty Insurance Company is a foreign corporation organized under the laws of the state of Iowa with its principal place of business located at 518 E. Broad Street, Columbus, Ohio 43215. *See Exhibit "B."*

7. Additionally, the amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. §1332(a). Plaintiffs' Original Petition seeks "monetary relief over \$100,000 but not more than \$200,000." *See Exhibit "A - 1."*

8. State Auto is the only defendant in this action; therefore, no consent is needed for the removal of this case to federal court.

9. An Index of Exhibits is attached as Exhibit "A". Copies of all pleadings, process, orders, and other filings in the State Court Action are attached to this notice as Exhibits "A - 1" through "A - 6", as required by 28 U.S.C. §1446(a). A list of the counsel of record for all parties, as required by Local Rule 81.6 is attached as Exhibit "C."

10. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this District and within this Division.

11. State Auto will promptly file a copy of this Notice of Removal with the clerk of the court in the pending State Court Action.

III.
JURY DEMANDED

12. State Auto requests that this matter be heard by a jury in this Court.

IV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant, State Auto, prays that this case be removed to the United States District Court for the Southern District of Texas, Houston Division, and that further proceedings in the State Court Action be discontinued, and that this Court assume full jurisdiction over such action as provided by law.

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Respectfully submitted,

/s/ Sterling Elza

Sterling Elza
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**ATTORNEY FOR DEFENDANT,
STATE AUTO PROPERTY & CASUALTY
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served upon the Plaintiffs by serving their counsel of record, Jesse S. Corona, The Corona Law Firm, PLLC, 521 N. Sam Houston Pkwy E, Suite 420, Houston, Texas 77060, (713) 678-0613, via fax and certified mail, return receipt requested, on this the 13th day of January, 2017.

/s/ Sterling Elza

Sterling Elza